

APPEAL NO. 032127
FILED OCTOBER 1, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on July 22, 2003. The hearing officer determined that the respondent (claimant) was not entitled to supplemental income benefits (SIBs) for the first quarter, but was entitled to SIBs for the second quarter. The hearing officer's determination regarding the first quarter of SIBs has not been appealed and has become final pursuant to Section 410.169.

The appellant (carrier) appeals the determination of entitlement to the second quarter of SIBs on the basis that the hearing officer did not address discrepancies in the record; that the hearing officer's analysis is silent as to a Dispute Resolution Information System (DRIS) note regarding the claimant's retirement; and that the claimant only obtained part-time employment two days prior to the expiration of the qualifying period. The claimant responds, urging affirmance.

DECISION

Affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The carrier appeals the hearing officer's determination of entitlement to SIBs on both the good faith and direct result requirements (see Section 408.142(a)(2) and (4) and Rule 130.102(b)). It is undisputed that the claimant, a packaging designer, sustained a severe compensable injury to his right shoulder and left leg on _____. The Appeals Panel has held that the direct result criteria may be met by a showing of a serious injury with long lasting effects which preclude a return to the preinjury employment. Texas Workers' Compensation Commission Appeal No. 002309-s, decided November 16, 2000. The preinjury employment in this case would have required crawling and bending which the claimant was unable to do. The hearing officer's determination on this point is supported by the evidence.

The parties stipulated that the qualifying period for the second quarter of SIBs was from December 13, 2002, through March 13, 2003. The claimant began his job search efforts on January 9, 2003, and although he lists over 50 job contacts during the qualifying period, he had not searched for employment every week of the qualifying period. Toward the end of the qualifying period, March 6, 2003, the claimant contacted an individual who was familiar with his preinjury skills and the claimant began working for that company "on a retainer" (apparently in a consulting status) as a packaging designer out of his home. The claimant began work on March 10, 2003.

The carrier asserted that the "Hearing Officer's analysis is silent as to the claimant's retirement prior to the qualifying period," and that the claimant "considered himself retired." Whether the claimant considered himself retired or not is in dispute. A DRIS note indicates that the "claimant is a retiree," but the claimant denies that he told anyone that. The hearing officer is the sole judge of the weight and credibility of the evidence and he may believe all, part, or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ).

The carrier also complains that the hearing officer did not fairly and accurately analyze the evidence; however, because the hearing officer did not agree with the carrier's position does not mean that he did not accurately analyze the evidence. The carrier also states that the claimant obtained part-time employment only two days prior to the end of the qualifying period. Rule 130.102(d)(1) provides that a claimant has made a good faith effort to obtain employment commensurate with the claimant's ability if the claimant had returned to work "in a position which is relatively equal to the injured employee's ability to work." The hearing officer found that during the qualifying period the claimant's requirement to attempt in good faith to obtain employment commensurate with his ability was satisfied in the claimant's return to work consulting on a retainer. In addition we have held that if the claimant complies with Rule 130.102(d)(1) during any portion of the qualifying period, that will satisfy the good faith requirement of Section 408.142(a)(4) and Rule 130.102(b)(2). Texas Workers' Compensation Commission Appeal No. 030298, decided March 10, 2003.

We have reviewed the complained-of determinations and conclude that the hearing officer's determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **TEXAS PROPERTY & CASUALTY INSURANCE GUARANTY ASSOCIATION for Reliance National Insurance Company, an impaired carrier** and the name and address of its registered agent for service of process is

**MARVIN KELLY, EXECUTIVE DIRECTOR
9120 BURNET ROAD
AUSTIN, TEXAS 78758.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Edward Vilano
Appeals Judge